

ORIGINAL

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In the Matter of	)	
	)	
Eligibility for the Specialized	)	GN Docket No. 94-90
Mobile Radio Services	)	
and Radio Services in the	)	
220-222 MHz Land Mobile Band	)	
and Use of Radio Dispatch	)	
Communications	)	

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TO: The Commission

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COMMENTS OF  
GEOTEK COMMUNICATIONS, INC.

FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554

Geotek Communications, Inc. ("Geotek") hereby submits its comments in response to the Commission's Notice of Proposed Rulemaking in the above-captioned proceeding. Geotek supports allowing wireline telephone common carriers to hold Specialized Mobile Radio ("SMR") licenses.<sup>1</sup> Geotek submits that the wireline restriction is no longer necessary in today's Commercial Mobile Radio Services ("CMRS") marketplace. Geotek opposes, however, the Commission's proposal to allow cellular licensees to provide dispatch service. Geotek's comments are set forth below.

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<sup>1</sup> Through its subsidiaries, Geotek holds authorizations in both the 800 MHz and the 900 MHz SMR frequency bands. As an SMR licensee that provides dispatch services to both fleet operators and small users, Geotek has a direct interest in the wireline ownership prohibition and regulatory restriction applicable to dispatch services.

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**I. WIRELINE TELEPHONE COMMON CARRIERS SHOULD BE PERMITTED TO HOLD SMR LICENSES**

Geotek supports the Commission's proposal to amend Section 90.603(c)<sup>2</sup> of its rules to permit wireline telephone common carriers that provide local exchange service to hold SMR licenses.<sup>3</sup>

The wireline restriction was initially adopted more than 20 years ago when the market for SMR services was substantially different than today.<sup>4</sup> As the Commission aptly notes, the basis for continuing the wireline prohibition on holding SMR licenses no longer exists in today's marketplace.<sup>5</sup> Thus, Geotek supports elimination of the prohibition.

**II. THE PROHIBITION ON PROVIDING DISPATCH SERVICES ON CELLULAR FREQUENCIES SHOULD BE MAINTAINED**

In the CMRS Second Report and Order the Commission concluded that the record was insufficient to "sustain an informed judgement regarding the effects that removal of the dispatch service ban may have in the

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<sup>2</sup> 47 C.F.R. § 90.603(c).

<sup>3</sup> NPRM, at ¶ 15.

<sup>4</sup> See Second Report and Order, 46 FCC 2d 752, 787 (1974).

<sup>5</sup> NPRM, at ¶¶ 18-21.

dispatch marketplace."<sup>6</sup> In the instant proceeding the Commission has tentatively concluded to allow "all mobile service common carriers to provide dispatch service."<sup>7</sup>

Geotek opposes repeal of the regulatory prohibition of the provision of dispatch services on cellular frequencies. As the Commission correctly points out, "SMR operations today are still relatively small in comparison to cellular operations."<sup>8</sup> Accordingly, allowing cellular carriers into the dispatch market using the cellular frequencies would unfairly give cellular carriers a dominant market position relative to SMR operators and have a chilling effect on potential new market entrants.

Further, the existing dispatch prohibition is necessary to protect against anticompetitive behavior by well-entrenched cellular incumbents. Cellular carriers have substantially more spectrum, established systems and a larger customer base than SMR providers.<sup>9</sup> If cellular

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<sup>6</sup> 9 FCC Rcd. at 1411.

<sup>7</sup> NPRM, at ¶ 30.

<sup>8</sup> NPRM, at ¶ 21.

<sup>9</sup> As cellular carriers convert their systems to digital communications, they will further widen the spectrum gap. Moreover, although digital conversion of SMR spectrum will increase capacity, it will never come close to the capacity that cellular carriers possess.

carriers are permitted to enter the dispatch market using their cellular frequencies and existing infrastructure, they could use their market power in the wireless voice and data market to cross-subsidize dispatch services, thereby undercutting potential competition.<sup>10</sup> Further, cellular carriers have sufficient market power to sustain below market pricing sufficient to drive smaller SMR providers out of business and to discourage new entrants.

Alternatively, if cellular carriers are limited to providing dispatch on separate frequencies, the potential anticompetitive effects would be reduced. Cellular carriers are currently permitted to enter the dispatch market by acquiring SMR frequencies. As the Commission notes, however, "most available SMR spectrum has been licensed in metropolitan areas."<sup>11</sup> In those areas cellular carriers would be subject to the Commission's exist-

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<sup>10</sup> The spectrum cap adopted in the CMRS Third Report and Order, FCC 94-212, GN Docket 93-252 (released September 23, 1994) whereby both SMR and cellular carriers may acquire up to 45 MHz of spectrum will not help alleviate the potential harm to competition. Cellular carriers currently control significantly more spectrum than SMR carriers. The potential anticompetitive harm will occur long before SMRs are capable of acquiring the necessary spectrum, constructing equivalent facilities and building a customer base to effectively compete with cellular dispatch. In fact, in the 900 MHz SMR band, the FCC has not even adopted rules to govern the auction process. See CMRS Third Report and Order, at n.220.

<sup>11</sup> NPRM, at ¶ 21.

ing transfer and assignment rules. In areas outside the metropolitan markets, cellular carriers applying for SMR spectrum would be subject to petitions to deny.<sup>12</sup> Thus, under this alternative, the Commission can review the potential anticompetitive effects of market entry on a case-by-case basis relevant to the specific market at the time a cellular carrier applies for SMR frequencies.<sup>13</sup>

If the Commission decides to repeal the dispatch prohibition, Geotek supports a "sunset" provision consistent with the August 10, 1996 transition period allowed pursuant to the Budget Act. The Budget Act specifically recognized that a transition period was necessary for existing SMRs to reorganize their operations to adjust to common carrier obligations. The Commission has only recently released the CMRS Third Report and Order to establish regulatory parity among the different CMRS services.<sup>14</sup> Eliminating the prohibition

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<sup>12</sup> See 47 U.S.C. § 309.

<sup>13</sup> See e.g., United State v. FCC, 652 F.2d 72, 88 (D.C. Cir. 1980) (The Commission must consider the antitrust laws "as an important part of [its] public interest calculus.")

<sup>14</sup> Third Report and Order, GN Docket No. 93-252, FCC 94-212, released September 23, 1994.

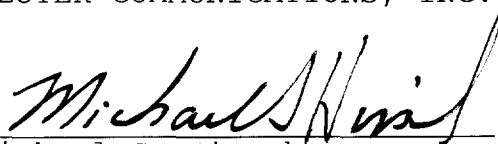
during the transition period would be inconsistent with the Budget Act and require "grandfathered" SMRs to compete in the dispatch market before full implementation of regulatory parity has become effective. Thus, Geotek recommends that, if cellular carriers are allowed to offer dispatch on their cellular frequencies, the Commission continue the prohibition during the transition period.

#### **CONCLUSION**

For the foregoing reasons, Geotek respectfully requests that the Commission modify its rules to permit wireline common carriers to hold SMR licenses and to continue the prohibition on cellular carriers offering dispatch services on their cellular frequencies.

Respectfully submitted by:

GEOTEK COMMUNICATIONS, INC.

A handwritten signature in black ink, appearing to read "Michael S. Hirsch", is written over a horizontal line.

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